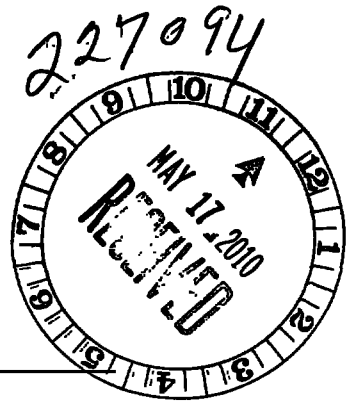


ENTERED
Office of Proceedings

MAY 17 2010

Part of
Public Record



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-290 (Sub- No. 311X)

**NORFOLK SOUTHERN RAILWAY COMPANY
PETITION FOR EXEMPTION
ABANDONMENT OF RAIL FREIGHT SERVICE OPERATION -
IN THE CITY OF BALTIMORE, MD AND BALTIMORE COUNTY, MARYLAND**

**COMMENTS / REPLY TO PETITION TO STAY AND
PETITION TO REOPEN APRIL 5, 2010 DECISION**

1. I, Zandra Rudo, herewith provide my Comments to Norfolk Southern Railway Company's Petitions for Exemption, and my Reply to James Riffin's ("Riffin") Petition for Stay and Petition to Reopen.

BACKGROUND INFORMATION

2. On April 5, 2010, the Board in the above entitled proceeding, served a decision granting Norfolk Southern Railway Company ("NSR") authority to abandon its operating rights on that portion of the Cockeysville Industrial Track ("CIT") that lies between Mileposts UU 1.0 and UU 15.44, and exempted the proceeding from the Offer of Financial Assistance ("OFA") procedures. The Board's Order stated the exemptions would become effective on May 5, 2010.

COMMENTS – DENIAL OF DUE PROCESS

3. “Due process requires, at a minimum, ... there must be notice and an opportunity to respond.” *Talley v. Talley*, 317 Md. 428, 434-435 (1989). (Emphasis added.) In accord: *Blanton v. Equitable Bank Nat’l Ass’n*, 61 Md. App. 158, 166 (1985); *Miranda v. Southern Pacific Transp. Co.* 710 F.2d 516, 522-23 (1983); *Zkravkovich v. Bell Atl-Tricon Leasing*, 323 Md.200, 209-210 (1991); *Roadway Exp. Inc. v. Piper*, 447 U.S.765, 767, 100 S.Ct. 2455, 2464 (1980).

4. On January 5, 2010, Carl Delmont (“Delmont”), Lois Lowe (“Lowe”) and I filed Notices to Participate as a Party of Record and personally signed the Notices to Participate. NSR moved to strike the notices, arguing that the notices were “from persons unidentified and unidentifiable.” NSR January 14, 2010 Motion to Strike, p. 4. In a decision served on March 22, 2010, the STB struck Delmont’s, Lowe’s and my Notices to Participate, stating:

“Of those individuals purportedly seeking to participate, only Riffin and now Eric Strohmeyer have submitted sufficient information to be listed as parties of record. Accordingly, NSR’s motion to strike the participation Notice is granted as to all of the named individuals except for Riffin.” Op. at 3.

5. Following the Board’s March 22, 2010 Decision, I spoke with Jo Dettmer, the STB’s Deputy Director of Proceedings. During my telephone conversation, I offered to provide the STB with a photocopy of my Maryland Driver’s License, to establish my identity. Mr. Dettmer explicitly stated that that was not necessary, for in his opinion, I was ‘identified.’ Not willing to trust Mr. Dettmer’s oral assurance, I filed a Motion for Protective Order with the STB along with a photocopy of my driver’s license (under seal). As it turned out, it was good I ignored Mr.Dettmer’s assurance and sent a photocopy of my driver’s license to the STB, since the STB did not acknowledge that I was

'identified,' and that I became a party, until March 26, 2010, the date the photocopy of my driver's license arrived at the STB.

6. On page 5 of its March 22, 2010 Decision, the STB made the following statements:

"In the interest of compiling a full and complete record, the Comments, as amended and supplemented, will be accepted into the record solely on behalf of Riffin. However, Riffin is advised that he has had a full and fair opportunity to respond to the NSR petition for exemption. ... Accordingly, any further submissions by Riffin to supplement the record will be looked upon with disfavor by the Board." (Emphasis added.)

7. It was not until the Board served its April 5, 2010 Decision that Delmont, Lowe and I were informed that we had the right to participate as parties of record. Unfortunately, our right to participate was purely illusory, since the right to participate was granted on p.2 of the STB's April 5, 2010 Decision, then rendered moot on p. 8 of the April 5 Decision, where the STB granted NSR's request to exempt the proceeding from the OFA procedures.

8. This failure to permit Delmont, Lowe and I to actually participate meaningfully, and to submit evidence to the STB regarding our interest in preserving the CIT for our freight rail needs, and the interest in freight rail service of six other shippers, denied us our "opportunity to respond," *Roadway Express, op. cit.*, and thus denied us our Due Process Right to participate in the proceeding. It was an egregious violation of my Due Process Rights to strike my Notice of Intent to Participate as a Party of Record, to abrogate my Due Process Right to submit comments and evidence of shipper interest in the CIT, and to exempt the proceeding from the OFA procedures before I was given an opportunity to participate in a meaningful way.

9. In November, 2009, in anticipation of NSR's Petition to abandon the CIT, shippers who had executed letters of interest / opposition to loss of freight rail service in 2006, executed new letters of interest / opposition to loss of freight rail service. Since Ms. Lowe is the Executive Secretary of the Cockeysville Rail Line Shippers Coalition, she, rather than Riffin, was the appropriate party to submit to the STB under seal, copies of letters from shippers expressing a desire for rail service in Cockeysville. This is the reason why Riffin did not include these shipper's letters in his Protective Order. Since in its March 22, 2010 decision, the STB expressly denied me the right to participate as a party, and since the STB expressly stated that it would look upon any additional filings by Riffin "with disfavor," Riffin complied with the STB's 'order' by not filing any additional material, and I waited until the STB granted me authority to participate. But at the moment the STB granted me authority to participate, it also summarily took away my right to participate, by rendering its decision exempting the proceeding from the OFA procedures.

10. Since the STB gave no weight to the shippers' letters previously filed by Riffin, due to the lack of verification, the shippers have reexecuted verified letters opposing loss of rail service on the CIT, indicating their desire for rail service, and further indicating the commodities they would ship and the estimated number of rail cars per year they would ship. The total number of rail cars these eight shippers would ship, 260, is 70 more than the 190 cars NSR stated that it shipped at a profit. See *Petition for Exemption – Norfolk Southern Railway Company*, AB 290 Sub No. 237X.

11. In a separate filing, Ms. Lowe has filed a Supplement to her Motion for Protective Order, which Supplement includes, under seal, eight verified letters from shippers who desire freight rail service on the CIT, and who object to the loss of freight rail service on the CIT.

**COMMENTS – THE STB LACKS JURISDICTION
TO ASCERTAIN THE SCOPE OF THE PROPOSED ABANDONMENT**

12. On page 6 of its Petition for Exemption, NSR states:

“The Line is located between railroad milepost UU-1.00 (located just north of Wyman Park Drive, formerly Cedar Avenue) and the end of the CIT line south of the bridge at railroad milepost UU-15.44.”

13. The statements “just north of Wyman Park Drive” and “south of the bridge at railroad milepost UU 15.44” are very imprecise. NSR and the MTA equivocate: In its Petition, NSR said the Line ends at MP 15.44, even though it also said in its footnote 11, that the Final System Plan only conveyed to MP 15.4. The MTA said in its April 26, 2010 Reply to Riffin’s Petition for Stay, that the Line ends at MP 15.4, which is what the Final System Plan states. The MTA further stated in its April 26 Reply at p.4:

“Neither that deed nor any other evidence offered by Riffin specifies that ‘Bridge No. 16’ means ‘the bridge at MP 15.96.’ ”

14. The U.S. Court of Appeals, District of Columbia Circuit, recently stated in *Consolidated Rail Corp. v. STB*, 571 F.3d 13 (D.C. Cir. 2009), that where the Board’s authority was challenged and an interpretation of the Final System Plan or the Special Court’s conveyance order under 45 U.S.C. 719(e)(2) was required, the Board lacked jurisdiction to resolve the question of the nature of the trackage sought to be abandoned.

15. In this proceeding, NSR has failed to identify precisely where the Line it proposes to abandon is located, and has failed to precisely indicate the scope of the conveyance to Conrail pursuant to the Final System Plan. NSR states in its Petition that it seeks to abandon to a point “south of the bridge at

railroad milepost UU-15.44.” Petition at 6. How far south of the “bridge at milepost UU - 15.44” is not specified. NSR does not indicate where the “Bridge at milepost UU 15.44” is located.

16. On page 15 of the *Consolidated Rail Corp. v. STB* decision, *Id.*, the court stated:

“The FSP [Final System Plan] designated for transfer to Conrail certain ‘rail lines,’ FSP at 261 (JA 842), which ‘[u]nless otherwise specified ... include[] all rail properties ... connected with, controlling or in any way pertaining to or used or usable by the designee in connection with the rail line designated including ... connecting spur and storage tracks.’ *Id.* at 241 (JA 965).” (Emphasis added.)

17. The railroad bridge over Beaver Dam Run was washed out by Hurricane Agnes on June 22, 1972. The railroad bridge over the Codorus Creek in Pennsylvania, a hundred feet or so north of Hanover Junction (about ½ mile south of Seven Valleys, PA), was also washed out. The Penn Central Transportation Company elected not to repair or replace these two bridges. Instead, in September, 1972, it filed to abandon that portion of the Northern Central Line that lies between Cockeysville, MD and Hyde, PA (about 5 miles north of Hanover Junction). Consequently, service between Cockeysville and Hanover Junction was no longer possible after June 22, 1972, since this segment was no longer ‘connected’ to the National Rail System.¹

18. The FSP, on p. 241, noted that the FSP was transferring to Conrail those line segments “connected with, ... or used or usable by the designee”

¹ The State of Pennsylvania objected to the abandonment of that portion of the Northern Central Line that lies between Hyde, PA and the Maryland / Pennsylvania line. After protracted litigation, the State of Pennsylvania bought this segment of the Line, then replaced the Codorus Creek railroad bridge that had been washed out by Hurricane Agnes, thereby preserving this segment for continued rail service. The State of Maryland filed no objection to the abandonment of the segment that lies between Cockeysville, MD and the Maryland / Pennsylvania line. The Interstate Commerce Commission never acted on the Maryland abandonment petition. This segment was ultimately abandoned by the Final System Plan, when it was not included in Final System Plan, due to this segment not being “connected with, ... or used or usable by the designee in connection with the rail line designated.”

Since that segment of the Northern Central line that was located between Beaver Dam Run in Cockeysville, MD, and Codorus Creek at Hanover Junction, in Pennsylvania, was no longer "connected with, or used or usable by the designee in connection with the rail line designated," I argue that the FSP did not convey this portion of the Northern Central Line to Conrail, and that therefore, the STB has no jurisdiction over this segment. In ¶¶ 31-32 I argue the cut line may be at old MP 14.4.

19. NSR, in its Petition for Exemption, stipulated that it sought to abandon to Milepost UU 15.44, which appears to be at Western Run. I base this conclusion on the following:

- A. Mr. Riffin has admitted into the record Mr. Robert Williams' Exhibit C-5, which depicts that portion of the Line that traverses the stations of Texas (south of old MP 14) and Ashland (south of old MP 16). This Exhibit states that the "York Turnpike" undergrade bridge is at old MP 14.85. This Exhibit further notes an undergrade bridge at old MP 15.05, where the Veneer Spur is depicted as being connected to the CIT. There is a 6-foot diameter culvert at this location. Another undergrade bridge is depicted at old MP 15.16. This MP 15.16 bridge is 0.31 miles from the York Road bridge, or about 1,636 feet. $[15.16 \text{ minus } 14.85 = 0.31 \text{ miles} = 1636.8 \text{ feet.}]$ A land survey by Thompson and Associates, shows the distance from the center of York Road to the center of Beaver Dam Run, along the center line of the right-of-way, is 1,529 feet. From this I would conclude that the undergrade bridge depicted at MP 15.16 is the bridge that crossed Beaver Dam Run.
- B. Scaling an ADC map from York Road to the center of Western Run along the center line of the right-of-way, gives the distance from

York Road to Western Run as 3,149 feet. This is close to the distance as computed from Exhibit C-5: 3,115 feet. [15.44 minus 14.85 = 0.59 miles = 3,115.2 feet.] From this I would conclude that the bridge depicted at MP 15.44 is the bridge over Western Run.

20. Appended as Exhibit B to the MTA's April 26, 2010 Reply is a photocopy of p. 505 of Volume II (Part III) of the Final System Plan, dated July 26, 1975. The heading states: "The following Out of Service and Intermittently Served Lines are not Designated for Transfer to Consolidated Rail Corp." For Line 145, the following notes appear:

"[*Termini:*] Hyde, Pa (Milepost 54.6) to Cockeysville, Md (Milepost 15.4). [*Date Last Used:*] June 23, 1972 [*Reason Out of Service and Comments:*] Damaged by 'Agnes.' The Cockeysville Industrial Park lies south of Milepost 15.4 and will continue to receive service."

21. The Final System Plan said that it was transferring to Conrail only to MP 15.4. Where MP 15.4 is actually located, is unknown at this time. The "Out of Service" notes state that the date Milepost 15.4 was last used, was September 23, 1972, and further state the reason was: "Damaged by 'Agnes.' "

22. The bridge over Western Run, which is about 1,500 feet north of Beaver Dam Run, was not damaged by Hurricane Agnes. Today it is still intact, and with the addition of a new set of railroad ties, would be fully functional. Western Run is just a few hundred feet south of the former Ashland Station. The Cockeysville Station was located a few hundred feet north of York Road, or about 1,400 feet from the Beaver Dam Run bridge that Agnes washed out. Had the 'Out of Service' note been referring to Western Run, it would have said to Ashland, at MP 16, rather than to Cockeysville, at MP 15.4. Since the Western

Run bridge was not damaged by Agnes, while the Beaver Dam Run bridge was totally obliterated by Agnes, the "Damaged by 'Agnes' " note was more likely referring to the Beaver Dam Run bridge.

23. Since the purpose of the Final System Plan was to retain those portions of line that were, as of July 26, 1975, "connected with, or used or usable by the designee in connection with the rail line designated," and since that portion of the CIT that was located north of Beaver Dam Run was incapable of being served by rail on July 26, 1975 (due to the obliteration of the Beaver Dam Run bridge), it is more probable that the intent was to convey to Conrail only to the south side of Beaver Dam Run, rather than to the south side of Western Run.

24. A physical inspection of the right-of-way on the south side of Beaver Dam Run would reveal a large mound of dirt on top of the mainline track, about 400 feet south of the south Beaver Dam Run bridge abutment. This mound of dirt would constitute a very effective end-of-track 'bumper.' Consequently, it is more likely than not, that the south side of this mound of dirt was the maximum northerly extent of the CIT that was "connected with, or used or usable by the designee in connection with the rail line designated." In ¶¶ 31-32 I argue the cut line may be at old MP 14.4.

25. I herewith challenge the STB's jurisdiction to "consider [NSR's] petition," since NSR's Petition "falls within the 'original and exclusive jurisdiction' of the United States District Court for the District of Columbia as successor to the Special Court 'to interpret ... [an order] entered by [the Special Court].'" *Consolidated Rail Corp. v. STB*, *op. cit.* at 19.

26. I argue that the extent of the conveyance by the FSP to Conrail must be determined prior to the STB granting NSR any abandonment authority on

the CIT. The precise location of the 'cut line' on the right-of-way must be determined, so that reversionary property interests may be precisely determined. This can only be done by the successor to the Special Court.

27. In this proceeding, the STB can neither go 'long' nor 'short.' If the end of the STB's abandonment authority is 'short' of where the FSP conveyed to Conrail, then a stranded segment will result. If the end of the STB's abandonment authority is 'long,' i.e., beyond the point where the FSP conveyed to Conrail, then the STB will have granted abandonment authority over real estate that the STB does not have any jurisdiction over.

28. Since NSR has petitioned to abandon to the end of the CIT, or to that most distant point conveyed by the FSP to Conrail in 1975, the precise extent of what was conveyed by the FSP to Conrail must be determined.

29. NSR has stated that it intends to abandon to MP 15.44, but fails to precisely state where MP 15.44 is located. This is what the FSP had to say about mileposts:

"Milepost designations are not always precise and, therefore, milepost designations in the appendix are necessarily approximate. The valuation maps generally reflect historical designations which were made when the lines were built. Through the years, portions of lines have been relocated, and mileposts on some lines have been renumbered. Milepost designations contained in the track charts do not always correlate with the valuation maps, although these discrepancies have been minimized to the extent possible. Further, milepost designations in operating timetables may not always reflect either track charts or valuation maps, particularly where two formerly separate lines are now used as a part of one through route. And, in a few instances, the physical mileposts on the ground may not correspond to any of the above records. FSP Vol 1, p. 241.

30. The mileposts on Mr. Williams' Exhibit C-5 may not be 'precise,' and 'may not correspond to any of the above records [FSP records].' Mr.

Williams' Exhibit C-5 indicates that milepost 15.44 is where Western Run is located. This conflicts with the FSP's statement that it intended to convey only those lines that were "used or usable" as of July, 1975, since on July, 1975, it was not physically possible to move a rail car farther north than the mound of dirt that is on the main line several hundred feet south of the south side of Beaver Dam Run, which is almost 2,000 feet south of Western Run, and may not have been possible to move a rail car farther north than the "end of rail" at old MP 14.4. See ¶¶ 31-32 where I argue the cut line may be at old MP 14.4.

31. Mr. Williams testified, which testimony the STB accepted as gospel truth, that his Exhibit C "reflects conditions existing as of 1965," Williams' Verified Statement ("VS") at 1; that the track north of York Road was removed prior to the MTA's acquisition of the CIT in 1990, VS at 2, and that the Veneer Spur "connection ... has been gone since the 1940's." VS 2-3. In its April 20, 2007 Response of the MTA, in FD No. 34975 - *Maryland Transit Administration - Petition for Declaratory Order*, the MTA stated: "In his Verified Statement, Mr. Williams describes the changes to the line since MTA acquired it. See VS Williams at 2-3, ¶¶6 (a) - (f). 7."

32. Mr. Williams' Map 2.4 shows a "Barricade" at station 17+49 and shows rail has been removed at Station 17+55. ["end of rail (17+55)"]. [Barricade (17+49) = 1,749 feet north of where station zero is located: "Point of switch (0+00) Mainline (760+54)."] Mr. Williams' Map 2.4 shows "Bridge No. 760-N (U.G.)" between "Point of switch" at station 760+08 and "Point of switch" at station 760+54. Mr. Williams' Exhibit C-5 shows an "U.G. Br" at 14.16. If the U.G. Br. at MP 14.16 is Bridge No. 760-N between Station 760+08 and 760+54, then the barricade would be at MP 14.49. [1749' = 0.33 miles. 0.33 miles + 14.16 = 14.49.] Since the "barricade" is at MP 14.49, which is 14.4 when the last digit is dropped, it is possible that the FSP meant to convey to MP 14.4 rather than to MP 15.4, since MP 14.4 is the

farthest north Conrail would have / could have operated on the CIT, in order to access the Cockeysville Industrial Park track.

33. 45 U.S.C. 719(e)(2) states:

“(2) The original and exclusive jurisdiction of the special court shall include any action, whether filed by any interested person or initiated by the special court itself, to interpret, alter, amend, modify, or implement any of the orders entered by such court pursuant to section 743(b) of this title in order to effect the purposes of this chapter or the goals of the final system plan.” (Bold added.)

34. All of this discussion leads to the conclusion that NSR, the STB, and none of the parties, have any idea what the FSP conveyed to Conrail. The FSP could have conveyed to MP 14.4, which is where the line is barricaded; to the old freight station, where the last vestige of rail can be seen; to York Road; or to the mound of dirt on one remaining stick of rail, several hundred feet south of Beaver Dam Run.

35. Since it cannot be determined from NSR's petition what the FSP conveyed to Conrail, NSR's petition must be rejected. The matter must be referred to the Special Court's successor, so that the extent of what was conveyed to Conrail by the FSP can be determined. Following that, NSR could then repetition the STB to abandon what the Special Court holds the FSP conveyed to Conrail.

MTA LIED TO STB

36. In this proceeding, the STB has relied extensively upon its decision in *Maryland Transit Administration – Petition for Declaratory Order*, STB Finance Docket No. 34975, Served October 9, 2007. In that proceeding, on April 20, 2007, the MTA made the following material representation:

"MTA has taken no actions that would prevent Norfolk Southern Railway Company ... from fulfilling its obligation to provide common carrier service on the line."

37. In reliance upon this statement by the MTA, the STB held that the MTA did not assume a residual common carrier obligation when it acquired the CIT in 1990.

38. On April 14, 2000, the MTA filed a petition for waiver with the Federal Railroad Administration ("FRA"), seeking a waiver from a number of FRA regulations that applied to the CIT. On January 19, 2001, the FRA granted the MTA's waiver request. A copy of the waiver is attached hereto. On page 15 of the waiver, the FRA stated that the waiver would be "effective for a five-year period from the date of this letter." Without the waiver, the MTA and NSR could not use the CIT even with 'temporal separations.'

39. In a letter dated May 17, 2007, the MTA represented to the FRA:

"(1) As a result of the cessation of freight service on the CLRL [Central Light Rail Line North] from a point at Chain Marker 122, [" the point where it (Norfolk Southern) crosses the line (CIT / CLRL) to reach the Flexi-Flo facility."] continuing north to the end of the line, MTA requests that FRA determine that there is no longer shared use of the line and that the waivers are no longer required because the statutes and regulations covered in the Shared Use Policy Statement no longer apply to the CLRL north of that point." (Bold added)

39. In a letter dated November 28, 2007, the FRA made the following statements, when deciding that the MTA no longer needed FRA waivers to operate on the CIT:

A. "MTA has requested that the modifications to these terms reflects the Norfolk Southern Railway Company's (NS) abandonment of freight service on its Cockeysville Light Rail Line (CLRL). NS, which shared the trackage of the CLRL with temporal separation, is ceasing freight service from a point at Chain Marker 122 continuing northward to the end of the line. The sole exception to this is at Chain marker 122,

where NS continues to cross the CLRL via a limited connection diamond crossover to service the NS Flexi-Flo facility.” Decision p. 1.

B. “[T]here is no longer shared use and relief from Title 49 of the Code of Federal Regulations (CFR) is no longer required.” Decision p. 1.

40. The January 19, 2001 FRA waiver permitted the MTA and NSR to operate on the CIT, providing temporal separation and a number of other conditions were complied with. The 2001 waiver expired five years after it was granted (2006). Rather than seek a renewal of the waiver, the MTA represented to the FRA that NSR had abandoned its freight operating rights. Based on this representation by the MTA, the FRA issued its November, 2007 decision holding that the MTA could operate on the CIT without a FRA waiver.

41. As of November 28, 2007, NSR was prohibited from operating on the CIT north of Chain Marker 122 (about milepost UU 0.8), since operation of freight trains on the CIT are prohibited by FRA regulations without a waiver of several of those regulations, which waiver terminated on November 28, 2007.

42. The MTA’s failure to obtain renewal of its 2001 FRA waiver was an “action[] that would prevent Norfolk Southern Railway Company ... from fulfilling its obligation to provide common carrier service on the line.” The MTA’s failure to advise the STB of the termination of its FRA waiver, with the concomitant result of making it illegal for NSR to operate on the CIT, was a “material misrepresentation” which completely undermines the STB’s October 9, 2007 decision, wherein the STB held the MTA did not assume a residual common carrier obligation over the CIT when it acquired the CIT in 1990, because the “MTA has not taken action since the time of the acquisition to conduct, control or interfere with common carrier freight operations on the line,” slip op. at 7, and because the MTA’s “acquisition of the CIT has not unduly impaired the freight railroad’s ability to continue to provide freight rail service.” Slip op. at 8.

43. It now becomes obvious why NSR adamantly refused to deliver Riffin's rail cars to Cockeysville in 2008: NSR's operation on the CIT would have been a violation of FRA regulations!

44. Recently, the Canadian National Railroad was ordered to appear before the STB to explain why it lied to the STB when under-reporting the number of times its trains blocked grade crossings in Chicago. I would suggest the STB should order the MTA to appear before the STB to explain why it never told the STB about its FRA waivers (and the lack thereof), and the impact the lack of waivers had on NSR's ability to operate on the CIT. I would further suggest that the STB *sua sponte* reopen the MTA's Declaratory Order proceeding in order to consider this newly-found evidence that the MTA deliberately misled the STB.

45. I adopt by reference herein, as if fully stated herein, all of the comments, allegations and legal arguments put forth by Mr. Riffin in his Petition to Stay and Petition to Reopen, except where they conflict with what I have argued, *supra*.

46. I certify under the penalties of perjury that the above is true and correct to the best of my knowledge, information and belief.

Executed on May 14, 2010.

Respectfully submitted,



Zandra Rudo
Ste 200 50 Scott Adam Road
Cockeysville, MD 21030
(410) 344-1505

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2010, a copy of the foregoing Comments, etc., was served by first class mail, postage prepaid, upon John Edwards, Senior General Attorney, Norfolk Southern Corporation, Law Department, Three Commercial Place, Norfolk, VA 23510-9241, Charles Spitulnik, Kaplan Kirsch, Ste 800, 1001 Connecticut Ave NW, Washington, DC 20036, and was hand delivered to Carl Delmont, James Riffin and Lois Lowe and was served via e-mail upon Eric Strohmeyer.

A handwritten signature in black ink that reads "Zandra Rudo". The signature is written in a cursive, flowing style.

Zandra Rudo

**Before the
Surface Transportation Board
Washington, D.C.**

EX A-1

Finance Docket No. 34975

Maryland Transit Administration – Petition for Declaratory Order

RESPONSE OF THE MARYLAND TRANSIT ADMINISTRATION

Communications with respect to this
document should be addressed to:

Charles A. Spitulnik
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW
Suite 905
Washington, D.C. 20036
(202) 955-5600
Email: cspitulnik@kaplankirsch.com
afultz@kaplankirsch.com
Counsel for the Maryland Transit
Administration

Dated: April 20, 2007

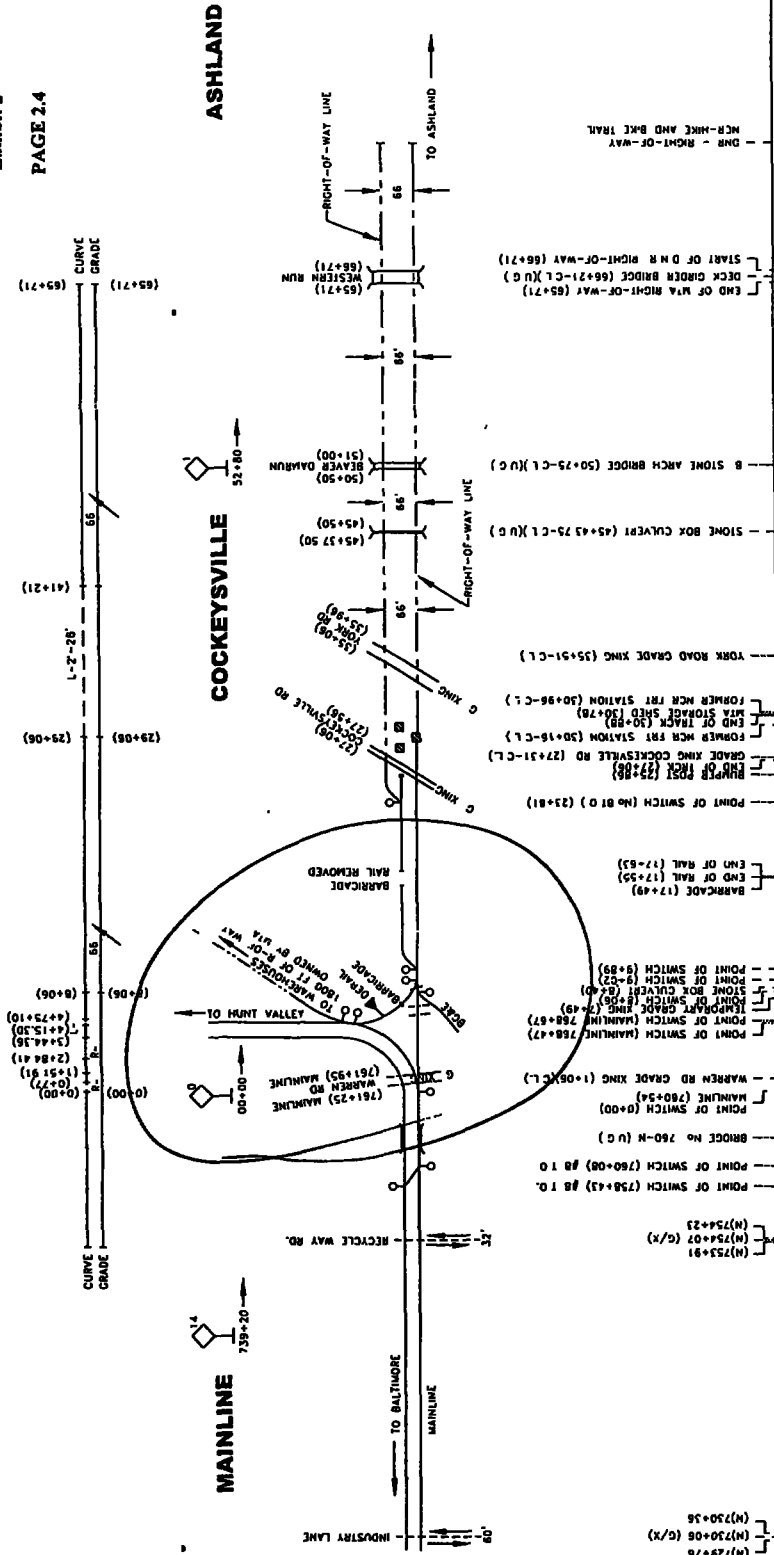
E+ A-2

B. MTA HAS RECONFIGURED THE CIT TO PERMIT EFFICIENT LIGHT RAIL OPERATIONS BUT HAS NOT SOLD OR SALVAGED ANY PORTION OF THE LINE OF RAILROAD

MTA ~~has taken no actions that would prevent~~ Norfolk Southern Railway Company (“NSR”), as successor to Consolidated Rail Corporation (“Conrail”) the holder of common carrier obligations on the CIT, ~~from fulfilling its obligation to provide common carrier service on~~ the line. In his Verified Statement, Mr. Williams describes the changes to the line since MTA acquired it. See VS Williams at 2-3, ¶¶ 6(a)-(f), 7.

Any action with respect to the transfer and development of the parcel referred to as the Maryland Specialty Wire property in Comments of James Riffin submitted in this proceeding on January 11, 2007, was undertaken by persons other than MTA (VS Williams at 4, ¶9) and, in any event, did not affect a line of railroad subject to the Board’s jurisdiction. MTA conveyed a portion of the private industrial spur within the MTA right of way which connected the CIT to Maryland Specialty Wire Inc., in 1995, subject to an easement in favor of Baltimore County over such parcel, but MTA ~~has never owned any of the real property on which the Maryland Specialty~~ Wire operation was previously located. No authorization for sale of the track or cessation of operations over it was required because it was a spur track covered by 49 U.S.C. §10906.

Other than the removal of tracks described in Mr. Williams’ Verified Statement, or the replacement of tracks as part of the construction of the light rail initially or the recent installation of a second track for the entire length of the light rail operation north of North Avenue, MTA has not sold or salvaged portions of the CIT line. MTA currently uses the CIT line from a point just north of North Avenue on the old CIT line (see VS Williams Exhibit D at page D-4) to a point just north of Warren Road (a point just north of MP 13 on VS Williams Exhibit D at page D-



**MARYLAND TRANSIT
ADMINISTRATION**

LIGHT
RAIL
LINE

**POLE YARD
SIDING**

STATION 0+0 TO STATION 65+71

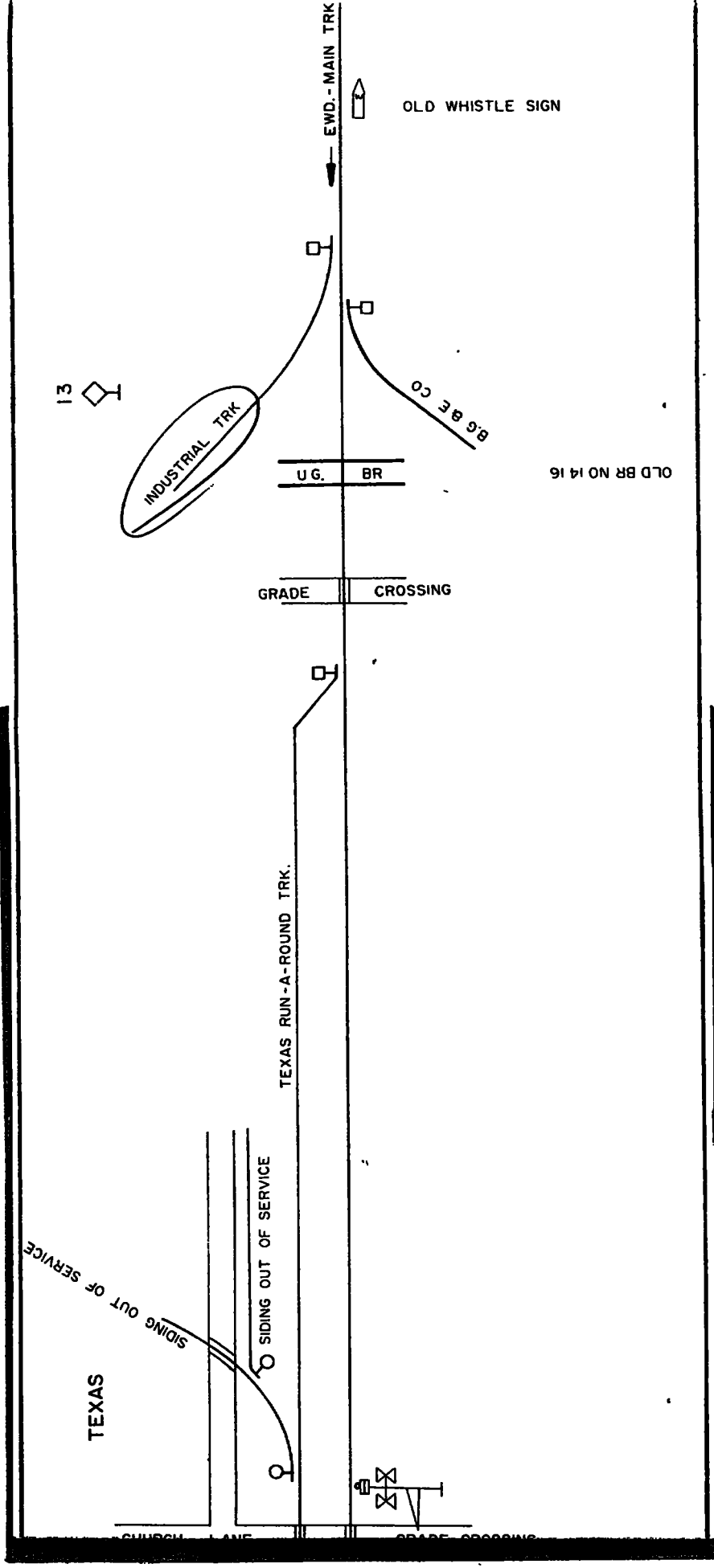


SYMBOLS

WILE POST	T O	TURN OUT
GRADE CROSSING	U G	UNDER GRADE
	C XING	GRADE CROSSING
UNDER GRADE BRIDGES		
HAND OPERATED SWITCHES		
DETAIL		
GRADE CROSSING		
RIGHT-OF-WAY LINE		

DESIGNED R L W	DATA 04 05 05
DRAWN L L.	APPROVED

ExA-3



EX-A-4



U.S. Department
of Transportation

Federal Railroad
Administration

121318

JAN 19 2001

RECEIVED

01 JAN 20 2001

400 Seventh St., S.W.
Washington, D.C. 20590

JRA-00-7054-12
JRA-00-7286-11

90% For 5 yrs
Reviewable.

ExB

Charles A. Spitulnik, Esq.
McLeod, Watkinson & Miller
Counsel for the Maryland Mass Transit Administration
One Massachusetts Avenue, N.W.
Washington, DC 20001-1401

RE: FRA Docket Nos. 2000-7054, 7286

Dear Mr. Spitulnik:

The Federal Railroad Administration (FRA) has reviewed the petition for waiver dated April 14, 2000, submitted by the Maryland Mass Transit Administration (MTA) for shared use of railroad track in connection with its Central Light Rail Line (CLRL). FRA carefully analyzed MTA's request and conducted investigations on the portion of the CLRL jointly used by the Norfolk Southern Railway Company (NS).

The review of MTA's request for relief was conducted with the participation of the Federal Transit Administration (FTA). See "Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems" (Federal Register Vol. 65, page 42525, July 10, 2000). In addition, FRA's "Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment" (Federal Register Vol. 65, page 42529), hereafter referred to as the "Shared Use Policy Statement," was closely followed. FRA has analyzed each specific request for relief to determine, in accordance with the statutory standard, whether such relief would be "in the public interest and consistent with railroad safety." 49 U.S.C. § 20103(d). The safety of the public, MTA employees, and NS employees was the guiding principle followed throughout FRA analysis of this waiver request.

Based on our careful review of the petition and comments received, FRA has granted full relief, partial relief, or has denied relief, as indicated below, for the specific regulations from which MTA has sought waivers. Where FRA has granted full or partial relief, that grant is based on the condition that CLRL operations remain temporally separated from NS operations in the precise manner described in the petition. Under that arrangement, CLRL and NS trains operate at separate and distinct portions of the day and are never operated on the shared use trackage at the same time (subject to limited exceptions for necessary non-revenue movements of light rail equipment, work trains and specialized work equipment during the freight operating window, as

discussed below). Rules are in place to ensure that such simultaneous joint use of trackage by CLRL light rail trains and NS trains does not occur. Relief is also granted under the condition that CLRL operations remain subject to the Maryland State Safety Oversight program in all areas where relief is granted. Violation of any condition for the granting of relief authorizes FRA to directly enforce the federal requirement from which relief has been granted and/or to amend or revoke that relief. Should at any time in the future information become available that is inconsistent with the findings upon which relief is granted, FRA may reopen this proceeding to consider the implications of those facts.

FRA has struggled to understand the precise arrangements under which occasional, unscheduled *non-revenue* light rail movements are made during the normal freight window. This is of interest with respect to the days on which Norfolk Southern (NS) provides freight service. FRA could not approve movement of passenger-occupied light rail vehicles during the freight window for reasons explained in the policy statements. We do recognize the necessity of limited, unscheduled non-revenue movements with only MTA employees on board during the freight window, which involve less risk because of their relatively low frequency, fewer persons on board, and in most cases the use of special procedures to reduce collision risk. Given the potential closing speeds of the light rail and freight movements, it is important that care be taken to maintain separation of these movements, and we recognize that MTA has taken a number of steps that should help achieve this result.

Our current understanding of current traffic and safety procedures, as derived from contacts with MTA/CLRL officials, and FRA's conditions for continued operation of non-revenue transit light rail vehicles during the freight window, are as follows:

1) Light Rail Vehicle test trains: This is the testing of light rail vehicles that have had repairs at the MTA shop at North Avenue, Baltimore. Testing can occur as frequently as three times per week. These trains operate at the southern most part of the 13-route-mile shared use area during NS operations. MTA dispatchers restrict test trains from North Avenue to Woodbury Avenue, a distance of under a mile.

Safeguards: Dispatchers know exactly where NS and MTA test trains are according to track circuit occupancy system. If NS has not entered MTA territory and test trains are operating, MTA dispatchers will hold NS until the MTA test train returns to North Avenue station. Generally, during testing, NS is working at the northern most areas of the shared use area. There have been no reports of near misses or problems during this operation. FRA determines that the current procedure is appropriate and prudent given the focus during the movements on the condition of the subject equipment and the irregular nature of the movements.

Condition: Whenever possible, NS trains must be held north of the trackage being employed by the test trains. All other applicable safeguards must be observed.

2) Ice Trains: These trains are run the entire distance of the shared use area to keep the catenary wires clear during extreme weather conditions. These trains will run at various times during freezing rain or other storm conditions on an as needed basis.

Safeguards: These trains are usually restricted to 25 mph during de-icing runs. If the NS train has not entered MTA property by the time the ice train has departed, the NS train is held outside MTA property. In the instances where NS is ahead of the ice train, the ice train will follow NS at a two track circuit block minimum. This is as close as the Light Rail Control Integration block system will allow the ice train to get before it receives a stop indication. No incidents are on record at MTA relating to the ice train and NS train operations. Interviews with NS train crews showed no problems encountered. Protection from collision seems adequate.

Condition: Existing safeguards, as described immediately above, must be observed.

3) Operator Training Trains: These trains run according to when operating classes are held. Operators qualify over the entire shared use area (North Ave to Hunt Valley). Operations classes currently vary from none to three classes per year, depending upon need. Trains will run twice a week for two weeks until qualifying is complete. However, MTA is in the process of adopting new operation rules which include re-certification of all personnel once every two years. This will change the number of trains running on shared use track. Currently, re-certification is not required by MTA.

Safeguards: NS crews are faxed a general order before departure from NS Bayview Yard in Baltimore. This order contains a work block in which the training train will operate. It is up to the dispatcher as to what course of action is taken based upon the circumstances at hand. Sometimes MTA will not allow NS to operate that night, but this does not appear to be a uniformly enforced procedure.

Condition: Current procedures may be employed for the next 90 days. However, within 45 days of the date of this letter, MTA must submit for FRA approval a more secure procedure for ensuring that training trains are segregated from NS freight operations. MTA is encouraged to consult with the FRA Regional Administrator, Region 2, while developing this proposal.

4) Disabled Trains: Disabled MTA trains are usually retrieved by other light rail vehicles or MTA 804 or 805 locomotives. These instances are rare but do occur (approximately two-three times per year).

Safeguards: Because of the various scenarios in this situation, movements are left to the dispatcher. Generally, the disabled MTA equipment is pulled to a double track area and NS is operated around MTA.

Condition: FRA recognizes that these situations must be handled on an individual basis, subject to existing rules. However, as a condition of this waiver NS may not be given authority to enter the CLRL while a passenger-occupied light rail train is on the line.

We note that roadway workers are frequently at work in the shared-use area of the railroad at night when the NS train is operating. In some cases maintenance forces will be using on-track equipment, such as a tamper or hi-rail vehicle. Roadway workers and their equipment are protected by a weekly MTA General Order for scheduled maintenance and by Form D for unscheduled and emergency maintenance. NS crews are careful to observe these orders, but there have been incidents in the past in which protection was not properly applied. This poses perhaps the most serious collision hazard in the shared-use area, if only because of the relative frequency that the NS train will encounter workers on the track or fouling the track. MTA methods of protection are reasonably consistent with those in place on general system railroads, and as such are acceptable. However, MTA is encouraged to continue efforts to ensure compliance by its personnel and NS crews with procedures for protecting roadway workers and their equipment. FRA will continue oversight of this aspect of the operations.

FRA has considered MTA's contention that FRA should issue a broad waiver here given relevant safety exposure that MTA deems *de minimis*. NS provides service over approximately 13 route miles (17 track miles) of the CLRL approximately three times per week, an operation that relies for its safety on the subject track structure, highway-rail crossing warning systems, the railroad signal system, operating rules and practices, etc., in addition to the observance of strict temporal separation (which has not been universally achieved in the past and which is not the rule with respect to non-revenue operations).¹ In addition, NS regularly crosses the CLRL at grade to access a customer.² A portion of the traffic which NS transports over the CLRL consists of commodities subject to the Department of Transportation Hazardous Materials Regulations. These freight operations are certainly less extensive than the dominant transit use, but we cannot view them as *de minimis* within the context of our safety responsibilities. In short, FRA does not evaluate the situation from the same perspective as MTA counsel, and accordingly has reviewed the waiver application with what we believe is appropriate attention to detail. At the same time, we have strived to craft relief that will permit MTA, insofar as practicable, to administer its operations in a unitary manner and within the system safety approach fostered by FTA regulations.

In some cases, it appears that MTA operations are not burdened by certain regulations (e.g., the Freight Car Safety Standards), and thus relief from those requirements is not properly at issue,

¹FRA recognizes the efforts of MTA to formalize arrangements for temporal separation and anticipates excellent follow through in the future.

²FRA notes that the CLRL shares a common right of way, but not trackage, with CSX at another location. That shared right of way operation is not part of MTA's petition and is not a subject of this decision.

since the circumstances under which such relief might be properly utilized have not been described. Please note that FRA has granted (or denied) only the relief specifically described below, and any further relief has not been considered on the merits. Should MTA operations change at a future date, resulting in the application of additional regulations, MTA will need to consider whether to apply for further relief.

In reviewing MTA's submission and analyzing information gained during field investigations, FRA has concluded that the following relief from the following parts of Title 49 of the Code of Federal Regulations (CFR) is warranted and is consistent with the Shared Use Policy Statement. FRA finds that such relief, consistent with the express conditions stated here, is in the public interest and consistent with railroad safety. Disposition of the request for relief follows:

Part 210, Railroad Noise Emission Compliance Regulations

Statement of concern. Noise issues with respect to light rail transit equipment should be regulated as a local matter. FRA has noted that, in addition to light rail vehicles, MTA uses locomotives No. 804 and 805 for work train service and rescue operations within the shared use portion of the CLRL. While the petition does not provide a specific explanation why use of these locomotives on the general rail system should not be subject to enforcement of otherwise applicable Environmental Protection Agency standards (40 CFR Part 201), FRA is aware that the EPA standards were established as national requirements in part to preempt inconsistent local regulation with respect to locomotives that may operate in more than one State. In this case, a public authority is operating all of the subject equipment, and providing a waiver will permit State and local regulation of locomotives that are operated exclusively within the Baltimore metropolitan area.

Full relief granted. Relief from Part 210 is granted.

Part 213, Track Safety Standards

Part 213 prescribes minimum safety standards for railroad track in regard to geometry and structural integrity. The track safety standards also prescribe minimum visual inspection frequency by railroad personnel to assure the track complies with the standards. In higher speed tracks railroads are required to conduct internal rail flaw detection inspections.

MTA inspects and maintains the track on the shared use portion of its system, which is a relatively small portion of its entire system. While MTA does have an extensive track inspection and maintenance program, the operation of freight trains on the CLRL subjects that track to safety risks that are inherent throughout the general railroad system. As detailed in MTA's waiver submission, the following items do not conform to the Federal Track Safety Standards (Part 213):

- *Appendix 5, Page 5, Section 3.1.2* - MTA procedures call for inspection on foot two times per week whereas §213.233 of the Federal Track Safety Standards calls for twice weekly visual inspections with at least one calendar day between inspections.
- *Appendix 5, Page 30, Paragraph 1.8.1.1* - Cracked joint bars are scheduled for replacement without any restrictions. FRA has specific speed restrictions for cracked bars depending on the location of the crack. For example, an acceptable remedial action for a center cracked or broken bar under §213.9(b) is for a qualified person to determine that it is safe to operate trains at Class 1 speeds over the condition for a period of not more than 30 days. MTA, on the other hand, allows a center cracked or broken bar to remain in track for more than 30 days at 12 mph.
- *Appendix 5, Page 30, Paragraph 1.8.1.2(a)* - This appears to allow for pullaparts to be operated over indefinitely at 12 mph, whereas §213.9(b) allows a qualified person to determine that operations may safely continue for up to 30 days subject to any limiting conditions specified by such person.
- *Appendix 5, Page 30, Paragraph 1.8.1.2(d)* - This appears to allow for 20 mph speeds (corresponding to FRA Class 2 track) for one bolt in a rail end. However, §213.121(d) requires that each rail shall be bolted with at least two bolts at each joint in Classes 2 through 5 track, and with at least one bolt in Class 1 track.
- *Appendix 5, Page 139, Paragraph 4.3.3.2. and 4.3.3.3* - This pertains to frogs and it call for 12 mph restrictions. Under §213.137 a maximum of 10 mph is allowed.
- *Appendix 5, Page 179, Paragraph 6.5.1.2* - This allows for gage of 4'7-7/8". The minimum permissible gage under §213.53 is 4' 8".
- *Appendix 7* - This proposed draft of a Track Inspection Guide contains procedures for inspection of joint bars and frogs which do not meet FRA Regulations.
- *Appendix 7, Page 60, Paragraph 11.2.3, Table 22* - This allows for 40 mph (FRA Track Class 3) for a profile condition of 2 to 2-1/2 inches. The maximum deviation from uniform profile is 2 1/4" under §213.63 for Class 2 track (no more than 25 mph for freight trains and 30 mph for passenger trains).

The rationale for allowing these types of deviations from standard requirements on trackage used by both freight and light rail equipment is not clear. As FRA indicated in its Shared Use Policy Statement, a waiver of the track standards on track used by a conventional railroad is very unlikely. In this situation, the shared use track is a very small portion of the track system maintained by MTA, and a waiver may be partially

justified to permit uniform practices by its maintenance forces on all of its track. However, MTA has not presented any safety rationale that would permit FRA to conclude that MTA's track maintenance requirements are sufficient to protect safety in the areas where they differ from FRA's rules (outlined above). To the extent MTA's standards are more stringent, MTA is at liberty to utilize them. Accordingly, relief is denied and FRA's track standards apply in full on the shared use portion of CLRL track.

Part 214, Railroad Workplace Safety

Subpart B - Bridge Worker Safety

Statement of concern. Part 214 Subpart B, Bridge Worker Safety, requires railroad to provide engineering employees who are subject to the dangers of such structures with fall protection procedures and equipment. FRA fall protection standards are similar to Occupational Safety and Health Administration (OSHA) standards but include features to address the unique work environment of railroad bridges.

Disposition. Relief from Part 214 Subpart B, Bridge Worker Safety, is granted, based on the condition that MTA provide FRA, within 30 days of this letter, written assurance that OSHA fall protection standards will be adhered to on all railroad bridges on the CLRL.

Subpart C - Roadway Worker Protection

Part 214, Subpart C, prescribes minimum measures to assure that maintenance of way and signal employees are not struck by trains or on-track equipment.

MTA employees maintain the right-of-way and structures along the portion of the CLRL where NS trains operate. While CLRL revenue trains and NS trains do not operate at the same time. MTA employees are engaged in roadway maintenance activities during all operating periods. Therefore, it is necessary for MTA to have procedures in place to protect employees from the dangers of being struck by CLRL trains and NS freight trains. Maintaining consistent procedures for all operational elements (i.e., NS trains, CLRL revenue trains, CLRL non-revenue trains, and MTA control center) is imperative to assure roadway workers are afforded on-track safety. Accordingly, relief is denied and FRA's roadway worker rules apply to the shared use portion of CLRL's system.

FRA notes that MTA has an on-track safety program as required by Part 214, Subpart C, Roadway Worker Protection. FRA has previously reviewed this program and, in a letter dated November 18, 1999, identified a list of items in MTA's program that require modification or clarification. A response to the items in this letter is required before FRA can consider granting full approval of its Roadway Worker Protection program.

Part 217, Railroad Operating Rules

Part 217 requires each railroad to provide training to its employees on the operating rules and to perform operational tests to monitor compliance with the operating rules, pursuant to a written program. FRA has reviewed the CLRL operating rules program and has concluded that it provides a level of training reasonably comparable to the requirements contained in Part 217, and that program is subject to periodic review and enhancement under the MTA's System Safety Program Plan. FRA understands that, under the operating rules revisions now underway, a structured program for verification of operating rules compliance will be undertaken. Based on this understanding, relief from Part 217 is granted.

Part 218, Railroad Operating Practices

The following discussion relates to Subparts B, C, and D of Part 218. Subpart E (camp cars) is not relevant to the CLRL's operations, and the same is true of section 218.39 of Subpart C.

Statement of concern. Part 218 Subpart D, Prohibition Against Tampering With Safety Devices, prescribes standards to prevent accidents and casualties that result from the operation of trains when safety device(s) intended to improve the safety of their movement have been disabled. MTA has a rule in place that effectively covers the minimum requirements for railroad operating rules and practices. However, it does not contain equivalent procedures consistent with Part 218, subpart D. These rules are based on a statutory mandate. No specific reason has been given for excepting MTA from these requirements, and application of the requirements would not appear to be in any way inconsistent with other applicable safety programs.

Part 218 Subpart B, Blue Signal Protection of Workers, prescribes minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment whose activities require them to work on, under, or between such equipment and addresses the danger of injury posed by any movement of such equipment. MTA rules incorporate procedures similar to blue flag, and NS crews are required to be qualified under these rules.

Relief is granted with respect to otherwise applicable portions of Part 218 except for *Subpart D, Prohibition Against Tampering With Safety Devices*. Observance of these statutorily-based requirements should create no conflict with existing transit rules and procedures, and relief from this subpart is denied.

Part 219, Control of Alcohol and Drug Use

Part 219 prescribes minimum federal safety standards for the control of alcohol and drug use by railroad workers for the purpose of preventing accidents and casualties in railroad operations resulting from the impairment of operating employees. FRA has reviewed MTA's alcohol and drug abuse program, which conforms to FTA requirements, and concludes that it provides a level of monitoring and prevention reasonably comparable to the requirements contained in Part 219. It is desirable from an administrative standpoint for employees to be subject to a single program. Accordingly, relief from Part 219 is granted.

Part 220, Railroad Communications

Statement of concern. MTA radio communication procedures provide a comprehensive set of protocols to assure precise communication between light rail trains, the operations center, roadway workers, and non-revenue trains. However, CLRL communication procedures are not consistent with general system terminology. Because MTA employees perform roadway maintenance duties on the shared use track during all times of day, even during NS operations, the inconsistent terminology could cause a mis-communication and result in a serious accident. Effective communication between NS trains and MTA employees is critical to assure the safety of roadway workers. Complete and thorough communication between employees is a critical component of any operation.

Partial relief granted. Requirements of Part 220 related to equipping of trains and provision of radios to roadway workers were designed around the needs of freight, intercity and commuter railroads and are waived in light of the need to maintain standard transit practices. Relief is granted as to radio procedures during the period of exclusive transit use. Relief is denied as to radio procedures related to movements within the freight window, given the need to maintain appropriate supervision of freight and transit movements at the outer boundaries of the freight window (including protection of roadway workers) and given requirements that fall on NS crews for which no waiver request has been made. Further, MTA must quickly resolve the problem of inconsistent terminology being used in communications involving NS trains and MTA roadway workers. Therefore, within 60 days of this letter, MTA must develop in consultation with NS, and submit to FRA, a menu of standard terms that will be used by MTA roadway workers, NS crews, and dispatchers in communications concerning the establishment of roadway worker protection. It would be most appropriate if that submission were included as part of the revised submission already required under Part 214.

This disposition is without prejudice to further consideration of relief from Part 220 upon an appropriately detailed showing. However, FRA has noted the potential for confusion related to freight window operations, particularly given MTA's apparent intention to operate non-revenue light rail trains on an unscheduled basis (which will depend for its safety on effective communication with NS movements).

Part 221, Rear End Marking Devices

Part 221 requires each train that occupies or operates on a main track be equipped with a display that indicates the rear of the train. The purpose of this requirement is to reduce the likelihood of collision between trains. The CLRL light rail vehicles are equipped with three red rear marking lights arranged in a triangular pattern that, under the conditions in which CLRL trains operate, including the braking curves of the light rail vehicles and the moderate speeds of nighttime freight movements, provides sufficient protection from collision. Further, these arrangements have been determined by MTA to be appropriate for street running. Accordingly, relief from Part 221 is granted.

Part 223, Safety Gazing Standards - Locomotives, Passenger Cars and Cabooses

Statement of concern. Part 223 requires that passenger cars, including self-propelled passenger cars built or rebuilt after 1980, be equipped with FRA certified glazing in all windows. This requirement is intended to reduce the likelihood of injury to passengers and/or employees from breakage and shattering of windows (including windshields). The requirement also has the benefit of helping to retain persons within the vehicle in the case of a derailment or collision. FRA recognizes that glazing prescribed by Part 223 is not a requirement for light rail transit vehicles on transit systems not connected to the general railroad system. However, these trains do operate on the general system. FRA understands that MTA has begun a program to retrofit its light rail vehicles with certified glazing due to window vandalism, with a significant minority of incidents occurring on the shared use trackage.

Provisional Relief granted. Provisional relief is granted from Part 223 based on MTA's existing light rail vehicle window replacement program, which indicates management action to address a known safety need. This relief is conditioned upon receipt from MTA within 60 days of a report documenting available information with respect to window breakage, any resulting injuries, and MTA's progress toward retrofit, including the expected completion data. Based upon that report, FRA will determine future action.

Provisional relief is also granted with respect to requirements for emergency windows and related emergency marking. MTA's light rail vehicles are designed with egress capacity through doors that appears to be adequate without reliance on windows. However, FRA requires additional information to make a final determination. MTA must submit a report within 60 days describing how the system is addressing the purposes of emergency egress and communication requirements found in Part 223.

Part 225, Railroad Accidents/Incidents - Report Classification, and Investigations

Statement of concern. Part 225 prescribes reporting requirements for equipment and grade crossing accidents and employee injuries meeting specific thresholds. Highway-rail grade crossing collisions are the largest single cause of fatalities in the railroad industry and FRA believes that reporting of train and crossing accidents is critical. Including the 17 crossings on the CLRL within the shared use area in FRA's reporting requirements

will assure a more comprehensive highway-rail grade crossing program, thereby enhancing crossing safety throughout the nation.

Partial relief granted. Relief is granted from Part 225 except with regard to train and highway-rail grade crossing accidents, with the understanding that employee injuries are to be reported under FTA or OSHA rules and that FRA will have access to this information for inspection and copying as necessary for FRA regulatory purposes. As explained in FRA's Shared Use Policy Statement, this waiver has no effect on FRA's authority to investigate accidents or on the obligation of light rail and other railroads to cooperate with those investigations. See 49 C.F.R. §§ 225.31 and 225.35 (which are not waived) and 49 U.S.C. §§ 20107 and 20902.³

Part 229, Railroad Locomotive Safety Standards

Part 229 prescribes minimum Federal safety standards for all locomotives except those propelled by steam power. The standards include design, maintenance and inspection standards appropriate for conventional freight, intercity passenger, and commuter vehicles (including MU locomotives). However, many of these standards are not appropriate to transit-type vehicles, even if used in commuter service. CLRL light rail vehicles are designed in accordance with transit industry practices, which are more appropriate in this setting. Also, CLRL's maintenance and inspection program for its light rail vehicles is appropriate for those vehicles and provides sufficient assurance of safety for passengers and employees. Accordingly, FRA grants relief from Part 229 with regard to CLRL's light rail vehicles.

MTA owns two diesel locomotives (No. 804 and 805) that are used in work train service and rescue operations on the shared use portion of the CLRL system. Currently there is no air brake maintenance program for these locomotives. These locomotives are otherwise consistent with standard railroad freight equipment. However, unlike light rail vehicles, there is no basis for applying different standards to these conventional locomotives than apply to similar locomotives in use on the general system. To the extent MTA's petition can be construed to request relief from Part 229 with respect to MTA diesel locomotives (currently Nos. 804 and 805), the request is denied.

³It should be noted that FRA is authorized under the authority of 49 U.S.C. 20107(a) to take all actions it considers necessary to carry out its railroad safety responsibilities, including "conduct investigations, make reports, issue subpoenas [sic], require the production of documents, take depositions, and prescribe recordkeeping and reporting requirements"; thus, there could be instances when FRA would work jointly with FTA and the state agency to investigate the cause of a transit accident that occurred off the general system. For example, if there is an accident on a portion of MTA's system not subject to shared use, but involving light rail equipment that is also used on the portion subject to FRA's rules, FRA would want to determine whether the cause of the accident pointed to a systemic problem with the equipment that might impact the transit system's operations on the shared use trackage.

It is important to assure that motorists and pedestrians at highway-rail grade crossings have consistent warning of the approach of all trains on the shared use portion of the CLRL. FRA recognizes that the CLRL light rail vehicles generally conform to the auxiliary light standards under §229.125 for safety at highway-rail grade crossings. Relief from this provision of Part 229 is predicated on MTA continuing to equip its light rail vehicles with auxiliary lights that present a distinct triangular pattern in order to maintain consistent visual warning to motorists and pedestrians at crossings on the shared use portion of the CLRL.

Part 231, Safety Appliance Standards, Part 232, Railroad Power Brakes, and Statutory Safety Appliance Standard: Light Rail Vehicles

Part 231 specifies the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances (e.g. handbrakes, ladders, handholds, steps). Part 232 contains the minimum Federal standards for inspection, testing and maintenance of air brake equipment. Part 232 contains the minimum and maximum heights for drawbars. In addition, the safety appliance provisions of the Federal railroad safety statutes (49 U.S.C. §§ 20301-20306) contain certain design requirements (e.g. automatic couplers) that can be waived only under certain limited circumstances (see § 20306). For the reasons discussed under Part 229, relief is denied with respect to Parts 231 and 232 with respect to MTA diesel locomotives (currently Nos. 804 and 805), for which MTA has provided no sound basis for not applying the standards designed for these types of vehicles.

FRA grants relief from Parts 231 and 232 *with regard to CLRL's light rail vehicles*. Those rules were written to apply to conventional freight, intercity passenger, and commuter vehicles, not uniquely designed light rail vehicles. CLRL vehicles are designed and built with safety appliances sufficient to protect employees from injury under the conditions in which these vehicles are used. Moreover, CLRL's equipment maintenance and inspection program adequately ensures that these appliances are maintained in safe condition. Similarly, the braking system used on CLRL vehicles appears sufficient to ensure proper braking in the circumstances in which those vehicles are used, and the maintenance and inspection program for those braking systems appears appropriate to ensure the safety of those braking systems.

FRA has reviewed MTA's request for relief from statutory safety appliance requirements and is of the view that relief from the administrative regulations may be sufficient to eliminate any conflict. Nevertheless, FRA finds that, to the extent any requirement of the Safety Appliance Laws is in conflict with the current design of MTA light rail vehicles, those vehicles should be and are exempt from such any such design requirements because they would preclude the implementation of more efficient railroad transportation equipment (see 49 U.S.C. § 20306). This disposition is particularly appropriate since these provisions were not originally intended to apply to street railway vehicles (see 49 U.S.C. § 20301(b)(4)), and the subject vehicles are used both on the shared portion of general railroad system and on a street railway.

Part 233, Signal Systems Reporting Requirements

Part 233 prescribes reporting requirements with respect to methods of train operation, block signal systems, interlockings, traffic control systems, automatic train stop, train control, and cab signal systems, or other similar appliances, methods, and systems. The reporting of signal failures and accidents caused by signal failures is a critical component of FRA's overall safety program. With NS trains operating on the shared use portion of the CLRL, it is necessary to assure that any incidents that require reporting under Part 233 are included in FRA's safety data base. This data base provides FRA with the necessary information to help prevent signal failures throughout the railroad industry. Accordingly, relief is denied.

Part 234, Grade Crossing Signal System Safety

Part 234 prescribes minimum maintenance, inspection, and testing standards for highway-rail grade crossing warning devices. It also prescribes standards for the reporting of failures of such systems and prescribes actions railroads must take when such warning systems malfunction. By applying the requirements of Part 234 for all operations (MTA and NS) within the shared use portion of the CLRL, the motoring public will be provided with consistent warnings.⁴ Accordingly, relief is denied.

Part 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief From the Requirements of Part 236

Part 235 prescribes application for approval to discontinue or materially modify block signal systems, interlockings, traffic control systems, automatic trains stop, trains control, or cab signal systems, or other similar appliances, devices, methods, or systems, and provides for relief from Part 236. Section 235.3(a) states this part applies to railroads that operate on standard gage track which is part of the general railroad system of transportation. It is imperative that MTA comply with Part 235 to ensure that any "material modifications" to the signal system are reviewed by the FRA. Accordingly, relief is denied. Please note that most routine adjustments and upgrades are not considered material modifications.

Part 236, Rules, Standards and Instructions Governing the Installation, Inspection, Maintenance and Repair of Signal and Train Control Systems, Devices and Appliances

Part 236 prescribes standards governing the installation, inspection, maintenance, and repair of signal and train control systems. This part is an important element of FRA's safety program to assure consistent safety of the signal system throughout the general

⁴Other light rail operators have requested relief related to movement over crossings in cases where warning device malfunctions have occurred. The issue of concern is use of a flagger. FRA is willing to extend similar relief to MTA within the scope of this docket upon specific request explaining the safety procedures employed.

railroad system. The CLRL operating rules and procedures rely heavily on the proper operation of the signal system to protect freight movements, light rail movements, and roadway workers. By design, the MTA signal system meets the minimum criteria under Part 236, and therefore compliance should not impose significant additional burdens. Accordingly, relief is denied.

Part 238, Passenger Equipment Safety Standards

Part 238 prescribes standards to prevent collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, or the general public, and to mitigate the consequences to the extent these events cannot be prevented. While these standards apply to all commuter service and nearly all passenger service on the general railroad system (see § 238.3), they were written with conventional freight, intercity passenger, and commuter vehicles in mind.

The CLRL light rail vehicles conform to the general design practices used throughout the transit industry. As a result, these vehicles are built to specifications quite different from those required for conventional equipment by Part 238, and have sufficiently less mass and structural strength than such equipment. However, because CLRL's operations preclude the simultaneous operation of revenue light rail vehicles and conventional equipment on the same track, there is little possibility of a collision between these two incompatible types of equipment. The only significant possibility of collision is between similarly constructed vehicles, such as two light rail vehicles. Those vehicles are constructed in such a way as to provide sufficient protection for occupants in the event of a collision between light rail vehicles in the circumstances of their current use. In addition, CLRL has an effective maintenance and inspection program that is specifically designed for those vehicles. Accordingly, relief from Part 238 is granted.

MTA has also petitioned for and received an extension of the date under §238.203 to continue operation of rail passenger vehicles that do not meet the buff strength requirements under Part 238. Any further extension under §238.203 is no longer necessary based on relief from Part 238, as indicated above.

Part 239, Passenger Train Emergency Preparedness

Part 239 prescribes minimum federal standards for the preparation, adoption and implementation of emergency preparedness plans by passenger railroads. MTA's system safety plan sets forth comprehensive procedures for emergency response that adequately address the concerns dealt with by Part 239. Accordingly, relief from Part 239 is granted.

Part 240, Qualification and Certification of Locomotive Engineers

Part 240 prescribes requirements for locomotive engineer eligibility, training, testing, certification, and monitoring. MTA uses training techniques and instructions similar to general system railroads such as Amtrak. CLRL operators receive comprehensive

training regarding the operation of light rail vehicles. CLRL's training, testing, and monitoring of its operators appears to be sufficient to ensure safety in the context of CLRL's current operations. Accordingly, relief from Part 240 is granted.

Hours of Service

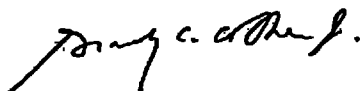
MTA has stated in its petition for waiver that a pilot program for the federal Hours of Service Laws (HSL) will be forthcoming. Therefore, any decision regarding relief from the HSL will be based on the specific procedures that MTA incorporates in the pilot project proposal it presents to the FRA. In the meantime, the HSL fully applies, together with the hours of duty records and reporting requirements of Part 228.

Conclusion

FRA reserves the right to amend or revoke any of the approvals detailed above based on non-compliance with the conditions imposed or based on any new information pertaining to the safety of MTA's operations. Furthermore, this waiver is effective for a five-year period from the date of this letter. At the conclusion of the five-year period, FRA reserves the right to extend the waiver if conditions warrant, provided that MTA has made a written request for an extension to FRA's Office of Safety Assurance and Compliance within six months of the expiration date.

In closing, I would like to take this opportunity to express our gratitude to MTA staff who cooperated with FRA and FTA staff during our investigation activities. Please feel free to contact me if you have any questions concerning this waiver at (202) 493-6302.

Sincerely,



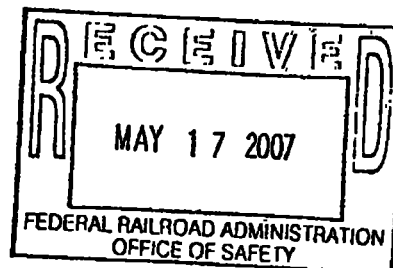
Grady C. Cothen, Jr.
Deputy Associate Administrator
for Safety Standards and Program Development

cc: Mr. Ronald Freeland, Administrator, Maryland MTA



KAPLAN KIRSCH ROCKWELL

May 17, 2007



VIA HAND DELIVERY

Mr. Grady C. Cothen, Jr.
Deputy Associate Administrator for
Safety Standards and Program Development
U.S. Department of Transportation
Federal Railroad Administration
1120 Vermont Avenue, N.W.
RRS-3, Mail Stop 25
Washington, DC 20590

E+C

Re: Docket Numbers 2000-7054, -7286

Dear Mr. Cothen:

I am writing to follow up on the approval by the Federal Railroad Administration ("FRA") of the request of the Maryland Transit Administration (formerly the Maryland Mass Transit Administration) ("MTA") for waivers of specified provisions of the FRA rules with respect to the shared use of railroad track in connection with the Central Light Rail Line North ("CLRL"), submitted on June 2, 2000 (the "Waiver Petition"). FRA granted MTA's requests, in part, in a letter dated January 19, 2001 and supplemented by a letter dated January 29, 2001 (collectively referred to as the "FRA Waivers"). By letter dated February 6, 2006, MTA has requested an interim extension of the waivers.

Changed circumstances on the CLRL now require that MTA seek additional relief with respect to the application of FRA's rules to the line. Specifically, and for reasons explained in further detail below, MTA asks the FRA to determine that:

(1) As a result of the cessation of freight service on the CLRL from a point at Chain Marker 122¹, continuing north to the end of the line, MTA requests that FRA determine that there is no longer shared use of the line and that the waivers are no longer required because the statutes and regulations covered in the Shared Use Policy Statement no longer apply to the CLRL north of that point.

¹ Exhibit I to the Waiver Petition presents the track charts and shows the location of the Chain Markers (used in the light rail system instead of "mileposts" used more commonly to refer to locations on freight rail lines).

(2) Because freight trains will continue to cross the CLRL at Chain Marker 122 to reach the Flexi-Flo facility (as described more fully in the Waiver Petition), the waivers that were approved that related to the operation of that crossing remain in effect, and that the Standard Operating Procedure number LR.07.02.04 provides sufficient protection of the public to form a basis for operation of that crossing.

(3) To the extent that FRA's rules still apply, the new Drug and Alcohol Testing Policy adopted pursuant to regulations of the Federal Transit Administration ("FTA") to replace the document attached to the Waiver Petition as Exhibit 12, provide sufficient protection of the public safety and form a sufficient basis to continue the waiver of the rules contained in Part 219, Control of Alcohol and Drug Abuse.

(4) To the extent that the FRA rules still apply, MTA requests continuation of the waivers that apply to operations at the crossing.

(1) Cessation of Freight Operations on the CLRL

NS no longer operates freight trains on the CLRL north of Chain Marker 122, the point where it crosses the line to reach the Flexi-Flo facility. In fact, the only NS operations on or near the CLRL are the operations across the line at that point (*see* item 2, below). NS sought authority from the STB to discontinue its freight operations on this line (except for the crossing). The STB has denied the requested authority², but NS will likely re-file its request once certain issues related to MTA's ownership of the line are resolved³. However, in anticipation of the proposed discontinuance, the shippers located along the line have made alternative arrangements for sending and receiving goods previously shipped via NS on the line and in fact supported the relief NS requested. As a result, NS is currently conducting no freight operations on the line, and has no plans to reinstitute service at this time. In the unlikely event that NS is required to provide freight service on the CLRL before the STB grants NS the authority to discontinue its common carrier obligation there, then MTA will advise FRA of the impending service and will comply with the applicable FRA rules to the extent required in the FRA Waivers. However, until that time, and in the absence of freight operations, MTA respectfully requests that the FRA determine that no shared use is occurring on this line and that the FRA rules no longer apply with respect to operations north of Chain Marker 122 for so long as no freight service is provided on the line.

² STB Docket No. AB 290 (Sub-No. 237X), *Norfolk Southern Ry. Co. – Abandonment Exemption – In Baltimore Co., MD., slip op.* (Service Date April 3, 2006).

³ MTA has filed a Petition for Declaratory Order at the STB seeking resolution of those issues. *See* STB Docket No. 34975, *Maryland Transit Administration – Petition for Declaratory Order* (filed on December 22, 2006).

(2) Standard Operating Procedure (SOP) LR.07.02.04

In the Waiver Petition, at pp. 10-12 and Exhibit 4, MTA describes the operation across the interlocking at Chain Marker 122. The FRA Waivers were granted based, in part, on that description of operations. Those operations continue today, even though NS provides no service north of Chain Marker 122.

MTA has now adopted SOP LR.07.02.04 to replace MTA Procedure No. 6.33 (Exhibit 4 to the Waiver Petition). A copy of SOP LR.07.02.04 is attached to this letter as Exhibit 1. It provides specific instruction to operators and persons who control the movement of trains through that interlocking. To the extent that FRA will continue to assert jurisdiction over the operations at that crossing and over the MTA employees who control the movement of NS trains through it, MTA is submitting a copy of this SOP for the FRA's information. SOP LR.07.02.04 preserves the high level of protection for safety of passengers on the light rail system that was provided by Procedure 6.33 and ensures that, in the limited circumstances when the freight trains cross the light rail line to reach the Flexi-Flo facility, there is no opportunity for unintended mishaps at this location.

(3) Waiver of Part 219


In the Waiver Petition, MTA included as Exhibit 12 a copy of its then-current Policy on Substance Abuse Prevention. To remain in compliance with applicable regulations of the Federal Transit Administration ("FTA"), MTA has now modified that policy. A copy of the new policy is attached to this letter as Exhibit 2. FRA recognized in the FRA Waivers that "[i]t is desirable from an administrative standpoint for employees to be subject to a single program." FRA Waivers (January 19, 2001 letter) at p.9. MTA submits that this new policy, like the old one "provides a level of monitoring and prevention reasonably comparable to the requirements contained in Part 219". *Id.* As a result, and to the extent that the employees who control the operation of the NS trains across the interlocking described in item 2, above, remain subject to the FRA rules, MTA submits that the new policy satisfies these same objectives and provides a basis for the FRA to continue in effect the waiver of part 219.

Mr. Grady C. Cothen, Jr.
May 17, 2007
Page 4

(4) Continuation of Waivers

MTA does not dispute at this time the continued jurisdiction of FRA over operations at the crossing at Chain Marker 122, including the persons who control the movement of freight trains through that crossing. To the extent that freight operations continue over the tracks at Chain Marker 122, and to the extent that MTA personnel control operations through that crossing, MTA requests the FRA to continue in effect the waivers that were approved in the FRA Waivers.

Respectfully submitted,



Charles A. Spitulnik

Enclosures: Exhibits 1 and 2

cc: T. Byron Smith, Esq.
Mr. Fletcher Hamilton

121294v1



U.S. Department
of Transportation
**Federal Railroad
Administration**

1120 Vermont Ave., N.W.
Washington, D.C. 20590

NOV 28 2007

Mr. Charles A. Spitulnik
Kaplan Kirsch & Rockwell, LLP
Attorneys at Law
1001 Connecticut Ave, NW - Suite 905
Washington, DC 20036

E + D

Re: Docket Number FRA-2000-7054/7286

Dear Mr. Spitulnik:

On November 15, 2007, the Federal Railroad Administration (FRA) Railroad Safety Board reviewed Maryland Transit Administration's (MTA) request for modification of the terms of its existing permanent Shared Use waiver of compliance granted January 19, 2001. MTA has requested that the modifications to these terms reflects the Norfolk Southern Railway Company's (NS) abandonment of freight service on its Cockeysville Light Rail Line (CLRL). NS, which shared the trackage of the CLRL with temporal separation, is ceasing freight service from a point at Chain Marker 122 continuing northward to the end of the line. The sole exception to this is at Chain Marker 122, where NS continues to cross the CLRL via a limited connection diamond crossover to service the NS Flexi-Flo facility.

FRA's review of MTA's request for relief was conducted with the participation of the Federal Transit Administration (FTA). (See "Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems" (65 Fed. Reg. 42525, July 10, 2000).) In addition, the analytical factors set forth in FRA's "Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment" (65 Fed. Reg. 42529, July 10, 2000) (hereafter "Statement of Agency Policy") were closely followed. In this regard, FRA has carefully analyzed each specific request for relief to determine if the granting of any relief is necessary, and if so, whether such relief would meet the statutory standard of being "in the public interest and consistent with railroad safety." (See 49 U.S.C. 20103(d); 49 CFR Part 211, Subpart C.) Ensuring the safety of the public, MTA, and NS employees remains of paramount importance to FRA.

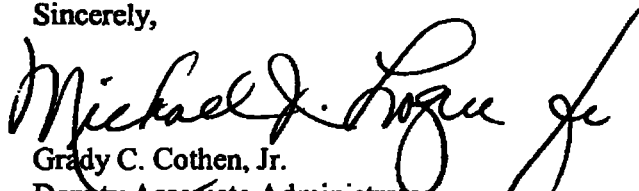
The FRA Railroad Safety Board recognizes that, with the cessation of NS freight service on the CLRL except at the limited connection diamond crossing, there is no longer shared use and relief from Title 49 of the Code of Federal Regulations (CFR) is no longer required.

Based upon the nature of the limited connection with the general railroad system within the confines of the diamond crossing, the FRA Railroad Safety Board does not seek to apply most parts of Title 49 of the CFR except §213 Track Safety Standards, § 214 © Roadway Worker Protection, § 214 Roadway Maintenance Machines, § 220 Railroad Communications (relief is denied as to radio procedures given the need to maintain appropriate supervision of freight and transit movements within the confines of the diamond crossing interlocking and given requirements that fall on NS crews for which no waiver request has been made. MTA shall continue to provide consistent terminology being used in communications involving NS trains and MTA roadway workers), § 225 Accident Reporting (employee injuries may be reported under FTA or OSHA rules), § 228 Hours of Service (applies only to CLRL dispatchers directing NS movements across the diamond interlocking and to signal maintainers working within the confines of the diamond interlocking), § 233 Signal Systems Reporting Requirements, § 235 Discontinuance of Signal System, and § 236 Signal System Rules Standards and Instructions.

MTA shall promptly provide the relevant State safety oversight agency (SSOA) with a copy of this decision letter and all correspondence to and from FRA related to this shared use waiver. Further, if MTA seeks any relief from requirements imposed by the SSOA related to the shared use operation- limited connection that is the subject of this waiver, MTA shall promptly provide to FRA's Associate Administrator for Safety copies of any such request and supporting documentation

Please feel free to contact me at (202) 493-6302 if you have any questions concerning this waiver request.

Sincerely,


Grady C. Cothen, Jr.
Deputy Associate Administrator
for Safety Standards and Program Development